

Exhibit C
**Apple's Proposed
Protective Order**

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

SOCIÉTÉ DU FIGARO, SAS, a French simplified
joint-stock company; L'ÉQUIPE 24/24 SAS, a
French simplified joint-stock company, on behalf of
themselves and all others similarly situated; and LE
GESTE, a French association, on behalf of itself, its
members, and all others similarly situated,

Plaintiffs,

v.

APPLE INC., a California corporation,

Defendant.

No. 4:22-cv-04437-YGR

[PROPOSED] PROTECTIVE ORDER

Hon. Thomas S. Hixson

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of confidential,
 3 proprietary, or private information for which special protection from public disclosure and from use
 4 for any purpose other than prosecuting this litigation may be warranted. Accordingly, plaintiffs Société
 5 du Figaro, SAS; L'Équipe 24/24 SAS; and LE GESTE, on the one hand, and defendant Apple Inc., on
 6 the other (collectively, the Parties, and individually, a Party) hereby stipulate to and petition the Court
 7 to enter the following Stipulated Protective Order. The Parties acknowledge that this Order does not
 8 confer blanket protections on all disclosures or responses to discovery and that the protection it affords
 9 from public disclosure and use extends only to the limited information or items that are entitled to
 10 confidential treatment under the applicable legal principles. The Parties further acknowledge, as set
 11 forth in Section 13.3, below, that this Stipulated Protective Order does not entitle them to file
 12 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
 13 followed and the standards that will be applied when a Party seeks permission from the Court to file
 14 material under seal.

15 **2. DEFINITIONS**

16 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information
 17 or items under this Order.

18 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is generated,
 19 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure
 20 26(c).

21 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as
 22 their support staff).

23 2.4 Designated House Counsel: House Counsel who seek access to "HIGHLY
 24 CONFIDENTIAL – ATTORNEYS' EYES ONLY" information in this matter.

25 2.5 Designating Party: a Party or Non-Party that designates information or items that it
 26 produces in disclosures or in responses to discovery as "CONFIDENTIAL" or "HIGHLY
 27 CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE
 28 CODE."

1 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium
2 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
3 transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery
4 in this matter.

5 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the
6 litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant
7 in this action, (2) is not a past or current employee of a Party or of a Party's competitor, and (3) at the time
8 of retention, is not anticipated to become an employee of a Party or of a Party's competitor.

9 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items:
10 extremely sensitive "Confidential Information or Items," disclosure of which to another Party or Non-
11 Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

12 2.9 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items: extremely
13 sensitive "Confidential Information or Items" representing computer code and associated comments
14 and revision histories, formulas, engineering specifications, or schematics that define or otherwise
15 describe in detail the algorithms or structure of software or hardware designs, disclosure of which to
16 another Party or Non-Party would create a substantial risk of serious harm that could not be avoided
17 by a less restrictive means.

18 2.10 House Counsel: attorneys who are employees of a party to this action. House Counsel
19 does not include Outside Counsel of Record or any other outside counsel.

20 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal
21 entity not named as a Party to this action.

22 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this action
23 but are retained to represent or advise a party to this action and have appeared in this action on behalf
24 of that party or are affiliated with a law firm which has appeared on behalf of that party.

25 2.13 Party: any party to this action, including all of its officers, directors, employees,
26 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

27 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material
28 in this action.

1 2.15 Professional Vendors: persons or entities that provide litigation support services (e.g.,
2 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing,
3 or retrieving data in any form or medium) and their employees and subcontractors.

4 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
5 “CONFIDENTIAL,” as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or as
6 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

7 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a
8 Producing Party.

9 **3. SCOPE**

10 The protections conferred by this Stipulation and Order cover not only Protected Material (as
11 defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
12 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or
13 presentations by Parties or their Counsel that might reveal Protected Material. However, the protections
14 conferred by this Stipulation and Order do not cover the following information: (a) any information that
15 is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public
16 domain after its disclosure to a Receiving Party as a result of publication not involving a violation of
17 this Order, including becoming part of the public record through trial or otherwise; and (b) any
18 information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party
19 after the disclosure from a source who obtained the information lawfully and under no obligation of
20 confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a
21 separate agreement or order.

22 **4. DURATION**

23 Even after final disposition of this litigation, the confidentiality obligations imposed by this
24 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
25 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
26 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
27 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time
28 limits for filing any motions or applications for extension of time pursuant to applicable law.

1 **5. DESIGNATING PROTECTED MATERIAL**

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
3 Non-Party that designates information or items for protection under this Order must take care to limit
4 any such designation to specific material that qualifies under the appropriate standards. To the extent
5 that it is practical to do so, the Designating Party must designate for protection only those parts of
6 material, documents, items, or oral or written communications that qualify – so that other portions of
7 the material, documents, items, or communications for which protection is not warranted are not swept
8 unjustifiably within the ambit of this Order.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to
10 be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber
11 or retard the case development process or to impose unnecessary expenses and burdens on other
12 Parties) expose the Designating Party to sanctions.

13 If it comes to a Designating Party’s attention that information or items that it designated for
14 protection do not qualify for protection, that Designating Party must promptly notify all other Parties
15 that it is withdrawing the mistaken designation.

16 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
17 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
18 Discovery Material that qualifies for protection under this Order must be clearly so designated before
19 the material is disclosed or produced.

20 Designation in conformity with this Order requires:

21 (a) for information in documentary form (e.g., paper or electronic documents, but
22 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
23 affix the legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
24 or “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page that contains protected material. If
25 only a portion or portions of the material on a page qualifies for protection, the Producing Party also
26 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins)
27 and must specify, for each portion, the level of protection being asserted.
28

1 A Party or Non-Party that makes original documents or materials available for inspection
 2 need not designate them for protection until after the inspecting Party has indicated which material it
 3 would like copied and produced. During the inspection and before the designation, all of the material
 4 made available for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 5 ONLY.” After the inspecting Party has identified the documents it wants copied and produced, the
 6 Producing Party must determine which documents, or portions thereof, qualify for protection under
 7 this Order. Then, before producing the specified documents, the Producing Party must affix the
 8 appropriate legend (“CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 9 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”) to each page that contains Protected
 10 Material. If only a portion or portions of the material on a page qualifies for protection, the Producing
 11 Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
 12 margins) and must specify, for each portion, the level of protection being asserted.

13 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
 14 Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding,
 15 all protected testimony and specify the level of protection being asserted. When it is impractical to
 16 identify separately each portion of testimony that is entitled to protection and it appears that substantial
 17 portions of the testimony may qualify for protection, the Designating Party may invoke on the record
 18 (before the deposition, hearing, or other proceeding is concluded) a right to have up to 21 days to
 19 identify the specific portions of the testimony as to which protection is sought and to specify the level
 20 of protection being asserted. Only those portions of the testimony that are appropriately designated for
 21 protection within the 21 days shall be covered by the provisions of this Stipulated Protective Order.
 22 Alternatively, a Designating Party may specify, at the deposition or up to 21 days afterwards if that
 23 period is properly invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or
 24 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

25 Parties shall give the other Parties notice if they reasonably expect a deposition, hearing,
 26 or other proceeding to include Protected Material so that the other Parties can ensure that only authorized
 27 individuals who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present
 28

1 at those proceedings. The use of a document as an exhibit at a deposition shall not in any way affect its
2 designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

3 Transcripts containing Protected Material shall have an obvious legend on the title page
4 that the transcript contains Protected Material, and the title page shall be followed by a list of all pages
5 (including line numbers as appropriate) that have been designated as Protected Material and the level
6 of protection being asserted by the Designating Party. The Designating Party shall inform the court
7 reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day period
8 for designation shall be treated during that period as if it had been designated “HIGHLY
9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the
10 expiration of that period, the transcript shall be treated only as actually designated.

11 (c) for information produced in some form other than documentary and for any
12 other tangible items, that the Producing Party affix in a prominent place on the exterior of the container
13 or containers in which the information or item is stored the legend “CONFIDENTIAL,” “HIGHLY
14 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
15 CODE.” If only a portion or portions of the information or item warrant protection, the Producing
16 Party, to the extent practicable, shall identify the protected portion(s) and specify the level of protection
17 being asserted.

18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
19 designate qualified information or items does not, standing alone, waive the Designating Party’s right
20 to secure protection under this Order for such material. Upon timely correction of a designation, the
21 Receiving Party must make reasonable efforts to assure that the material is treated in accordance with
22 the provisions of this Order.

23 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

24 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
25 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
26 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
27 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
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1 confidentiality designation by electing not to mount a challenge promptly after the original designation
2 is disclosed.

3 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by
4 providing written notice of each designation it is challenging and describing the basis for each challenge.
5 To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the
6 challenge to confidentiality is being made in accordance with this specific paragraph of the Protective
7 Order. The Parties shall attempt to resolve each challenge in good faith and must begin the process by
8 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within
9 14 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for
10 its belief that the confidentiality designation was not proper and must give the Designating Party an
11 opportunity to review the designated material, to reconsider the circumstances, and, if no change in
12 designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed
13 to the next stage of the challenge process only if it has engaged in this meet and confer process first or
14 establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely
15 manner.

16 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
17 intervention, they shall follow the Discovery Standing Order for Magistrate Judge Thomas S. Hixson
18 (Standing Order), or proceed as otherwise directed by the Court. In such event, the Parties may: (a)
19 arrange a telephonic conference with the Magistrate Judge as contemplated by the Standing Order; or
20 (b) prepare and file a joint statement as contemplated by the Standing Order. Any joint statement filed
21 pursuant to this paragraph 6.3 shall comply with Civil Local Rule 79-5, if applicable, and shall be filed
22 and served within 21 days of the initial notice of challenge or within 14 days of the Parties agreeing
23 that the meet and confer process will not resolve their dispute, whichever is earlier. Each such joint
24 statement must contain an attestation affirming that the Parties have complied with the meet and confer
25 requirements imposed by the Standing Order. Failure by the Designating Party to file such a joint
26 statement within the 21-day period set forth above (or 14-day period, if applicable) shall automatically
27 waive the confidentiality designation for each challenged designation.
28

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other Parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file a joint statement to retain confidentiality as described above, all Parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(d) the Court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) mock jurors who have signed an undertaking, the content of which shall be agreed upon by the Parties;

(g) during his or her deposition, a witness in the action to whom disclosure is reasonably necessary and: (i) who has signed the “Acknowledgement or Agreement To Be Bound” that is attached hereto as Exhibit A; or (ii) who has been advised on the record that the information or item is subject to a protective order and cannot be disclosed, and who also is an author or recipient of the information or item, or a custodian or other person who otherwise possessed or knew the information, unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(h) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

(a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

(b) Designated House Counsel of the Receiving Party (i) who has no involvement in competitive decision-making, (ii) to whom disclosure is reasonably necessary for this litigation, (iii)

1 who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
2 A, and (iv) as to whom the Designating Party has agreed in writing.

3 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
4 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to
5 Be Bound” (Exhibit A), without disclosure of the identity of the Expert as long as the Expert is not a
6 current officer, director, or employee of a competitor of a Party or anticipated to become one;

7 (d) the Court and its personnel;

8 (e) court reporters and their staff, professional jury or trial consultants, and
9 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
10 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 (f) mock jurors who have signed an undertaking, the content of which shall be
12 agreed upon by the Parties; and

13 (g) the author or recipient of a document containing the information or a custodian
14 or other person who otherwise possessed or knew the information.

15 **8. SOURCE CODE**

16 (a) To the extent production of source code becomes necessary in this case, a
17 Producing Party may designate source code as “HIGHLY CONFIDENTIAL – SOURCE CODE” if it
18 compromises or includes confidential, proprietary, or trade secret source code.

19 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE
20 CODE” shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL –
21 ATTORNEYS’ EYES ONLY” information and may be disclosed only to the individuals to whom
22 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information may be disclosed, as set
23 forth in Paragraph 7.3, with the exception of Designated House Counsel.

24 (c) Any source code produced in discovery shall be made available for inspection in
25 a format through which it could be reasonably reviewed and searched during normal business hours or
26 other mutually agreeable times at a location that is mutually agreed upon. The source code shall be made
27 available for inspection on a secured computer in a secured room without Internet access or network
28 access to other computers, and the Receiving Party shall not copy, remove, or otherwise transfer any

1 portion of the source code onto any recordable media or recordable device. The Producing Party may
2 visually monitor the activities of the Receiving Party's representatives during any source code review,
3 but only to ensure that there is no unauthorized recording, copying, or transmission of the source code.

4 (d) The Receiving Party may request paper copies of limited portions of source code
5 that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or other
6 papers, or for deposition or trial, but shall not request paper copies for the purposes of reviewing the
7 source code other than electronically as set forth in Paragraph 8(c) in the first instance. The Producing
8 Party shall provide all such source code in paper form including Bates numbers and the label
9 "HIGHLY CONFIDENTIAL – SOURCE CODE." The Producing Party may challenge the amount of
10 source code requested in hard copy form pursuant to the dispute resolution procedure and timeframes
11 set forth in Paragraph 6 whereby the Producing Party is the "Challenging Party" and the Receiving
12 Party is the "Designating Party" for purposes of dispute resolution.

13 (e) The Receiving Party shall maintain a record of any individual who has inspected
14 any portion of the source code in electronic or paper form. The Receiving Party shall maintain all paper
15 copies of any printed portions of the source code in a secured, locked area. The Receiving Party shall
16 not create any electronic or other images of the paper copies and shall not convert any of the information
17 contained in the paper copies into any electronic format. The Receiving Party shall only make additional
18 paper copies if such additional copies are (1) necessary to prepare court filings, pleadings, or other
19 papers (including a testifying expert's expert report), (2) necessary for deposition, or (3) otherwise
20 necessary for the preparation of its case. Any paper copies used during a deposition shall be retrieved
21 by the Producing Party at the end of the day and must not be given to or left with a court reporter or any
22 other unauthorized individual.

23 **9. DATA SECURITY**

24 9.1 Receiving Party shall implement an information security management system to
25 safeguard Protected Materials, including reasonable and appropriate administrative, physical, and
26 technical safeguards, and network security and encryption technologies governed by written policies
27 and procedures, which shall comply with at least one of the following standards: (a) the International
28 Organization for Standardization's 27001 standard; (b) the National Institute of Standards and

1 Technology's (NIST) 800-53 standard; (c) the Center for Internet Security's Critical Security Controls;
2 or (d) the most recently published version of another widely recognized industry or government
3 cybersecurity framework. Each Party shall implement multi-factor authentication¹ and, where
4 reasonably practical, implement encryption to protect Protected Materials (i) at rest and (ii) in
5 electronic transit outside of network(s) covered by the Party's information security management
6 system.

7 9.2 If Receiving Party becomes aware of any unauthorized access, use, or disclosure of
8 Protected Materials or devices containing Protected Materials ("Data Breach"), Receiving Party shall
9 promptly, and in no case later than 48 hours after learning of the Data Breach, notify Designating Party
10 in writing and fully cooperate with Designating Party as may be reasonably necessary to (a) determine
11 the source, extent, or methodology of such Data Breach, (b) to recover or to protect Protected
12 Materials, and/or (c) to satisfy Designating Party's legal, contractual, or other obligations. For the
13 avoidance of doubt, notification obligations under this Section arise when the Receiving Party both (a)
14 learns of a Data Breach, and (b) learns that any of the Designating Party's Protected Materials are
15 potentially subject to the Data Breach. The notification obligations set forth in this Section do not run
16 from the time the Data Breach itself.

17 (a) Receiving Party shall promptly comply with Designating Party's reasonable
18 request(s) that Receiving Party investigate, remediate, and mitigate the effects of a Data Breach and
19 any potential recurrence and take all reasonable steps to terminate and prevent unauthorized access.
20 Receiving Party shall promptly provide any information that is reasonably requested by Designating
21 Party and that relates to any such Data Breach, including but not limited to, the Protected Material that
22 was impacted, underlying vulnerabilities or flaws that led to the Data Breach, start or end date of the
23

24
25 ¹ Multi-factor authentication is "[a]uthentication using two or more factors to achieve authentication.
26 Factors are (i) something you know (e.g., password/personal identification number); (ii) something
27 you have (e.g., cryptographic identification device, token); and (iii) something you are (e.g.,
28 biometric)." National Institute of Standards and Technology (NIST), Special Publication SP 1800-12,
Appendix B at 63, available at <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.1800-12.pdf>; *see also* NIST, Special Publication 800-53, at 132, available at
<https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r5.pdf>.

1 Data Breach, date of discovery, and specific actions taken to contain, mitigate, or remediate the Data
 2 Breach. For the avoidance of doubt, nothing in this Section 9 is intended to create a waiver of any
 3 applicable privileges, including privileges applicable to a Party's investigation and remediation of a
 4 Data Breach.

5 (b) If Receiving Party is aware of a Data Breach, the Parties shall meet and confer
 6 in good faith regarding any adjustments that should be made to the discovery process and discovery
 7 schedule in this action, potentially including but not limited to (1) additional security measures to
 8 protect Discovery Material; (2) a stay or extension of discovery pending investigation of a Data Breach
 9 and/or implementation of additional security measures; and (3) a sworn assurance that Discovery
 10 Materials will be handled in the future only by entities not impacted by the Data Breach.

11 (c) In the event of a Data Breach affecting Protected Material of Designating Party,
 12 at Designating Party's request, Receiving Party within 10 business days shall provide a copy of its
 13 most recent information security management system policies and procedures that relate to the
 14 safeguarding of Protected Materials.

15 9.3 Receiving Party shall comply, and undertake best efforts to ensure that its Counsel, its
 16 Professional Vendors, its Experts, and any other person to whom it has disclosed Protected Material
 17 comply with this Section 9 and any applicable security, privacy, data protection, or breach notification
 18 laws, rules, regulations, or directives ("Applicable Data Law"). If Receiving Party is uncertain whether
 19 a particular practice would conform with the requirements of this Section 9, it may meet and confer
 20 with the other Parties; if any Party believes that the proposed practice would violate this Protective
 21 Order, it may, within 10 business days, bring the dispute to the Court. The Party challenging the
 22 proposed practice would bear the burden of demonstrating a violation.

23 **10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER** 24 **LITIGATION**

25 If a Party is served with a subpoena or a court order issued in other litigation that compels
 26 disclosure of any information or items designated in this action as "CONFIDENTIAL," "HIGHLY
 27 CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL – SOURCE
 28 CODE" that Party must:

1 (a) promptly notify in writing the Designating Party. Such notification shall include a
2 copy of the subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena or order to issue in
4 the other litigation that some or all of the material covered by the subpoena or order is subject to this
5 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

6 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
7 Designating Party whose Protected Material may be affected.

8 If the Designating Party timely seeks a protective order, the Party served with the subpoena or
9 court order shall not produce any information designated in this action as “CONFIDENTIAL,”
10 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL –
11 SOURCE CODE” before a determination by the Court from which the subpoena or order issued, unless
12 the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden
13 and expense of seeking protection in that court of its confidential material – and nothing in these
14 provisions should be construed as authorizing or encouraging a Receiving Party in this action to
15 disobey a lawful directive from another court.

16 **11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
17 **THIS LITIGATION**

18 (a) The terms of this Order are applicable to information produced by a Non-Party in
19 this action and designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’
20 EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such information produced by
21 Non-Parties in connection with this litigation is protected by the remedies and relief provided by this
22 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
23 additional protections.

24 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
25 Party’s confidential information in its possession, and the Party is subject to an agreement with the
26 Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

27 (1) promptly notify in writing the Requesting Party and the Non-Party that
28 some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the Court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

13.1. The production without manual review of any privileged or otherwise protected document or ESI, whether inadvertent or otherwise, is not and shall not be deemed a waiver or impairment of any claim of privilege or protection arising under the attorney-client privilege, the protection afforded to work-product materials, or any other privilege or protection from discovery,

1 in these cases or in any other federal or state proceeding, as long as the Producing Party follows the
2 procedure in Section 13.2.

3 13.2. If any Producing Party learns that its privileged or protected material has been
4 produced, it must promptly notify the Receiving Parties in writing. The Producing Party and the
5 Receiving Parties shall then apply the procedures and terms set forth in Sections 13.3 and 13.4.

6 13.3. Upon a request from any Producing Party who has inadvertently produced Discovery
7 Material that it believes is privileged and/or protected, each Receiving Party shall immediately return
8 such Protected Material or Discovery Material and all copies to the Producing Party, or destroy such
9 Discovery Material and certify that destruction to the Producing Party.

10 13.4. Nothing herein shall prevent the Receiving Party from preparing a record for its own
11 use containing the date, author, addresses, and topic of the inadvertently produced Discovery
12 Material and such other information as is reasonably necessary to identify the Discovery Material
13 and describe its nature to the Court in any motion to compel production of the Discovery Material.

14 13.5. Nothing herein is intended to shift the burden imposed by law, in the event of a
15 challenge by any Receiving Party, of establishing the privileged or protected nature of any privileged
16 or protected information.

17 13.6. Nothing herein is intended to or shall serve to limit any Producing Party's rights to
18 conduct a review of documents or ESI (including metadata) for relevance, responsiveness, and/or
19 privilege or protection from discovery before production.

20 **14. MISCELLANEOUS**

21 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
22 modification by the Court in the future.

23 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no
24 Party waives any right it otherwise would have to object to disclosing or producing any information or
25 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any
26 right to object on any ground to use in evidence of any of the material covered by this Protective Order.

27 14.3 Filing Protected Material. Without written permission from the Designating Party or a
28 court order secured after appropriate notice to all interested persons, a Party may not file in the public

1 record in this action any Protected Material. A Party that seeks to file under seal any Protected Material
2 must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to
3 a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local
4 Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material at
5 issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a
6 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5 is
7 denied by the Court, then the Receiving Party may file the information in the public record unless
8 otherwise instructed by the Court.

9 **15. FINAL DISPOSITION**

10 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
11 Receiving Party must return all Protected Material to the Producing Party or destroy such material. As
12 used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
13 summaries, and any other format reproducing or capturing any of the Protected Material. Whether the
14 Protected Material is returned or destroyed, the Receiving Party must submit a written certification to
15 the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day
16 deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned
17 or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts,
18 compilations, summaries or any other format reproducing or capturing any of the Protected Material.
19 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion
20 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial
21 exhibits, expert reports, attorney work product, and consultant and expert work product, even if such
22 materials contain Protected Material. Any such archival copies that contain or constitute Protected
23 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

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1 DATED: January 19, 2023

Respectfully submitted,

2 GIBSON, DUNN & CRUTCHER LLP

3 By: /s/ Caeli A. Higney

4 Caeli A. Higney

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20 *Attorneys for defendant Apple Inc.*

ORDER

Considering defendant Apple Inc.'s proposed protective order, which it has demonstrated is justified by good cause, this Court enters this order to govern discovery between the parties in the above-captioned action. **IT IS ORDERED.**

Dated this ____ day of _____, 2023.

Hon. Thomas S. Hixson
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full business address], declare under
penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Northern District of California on
_____ [date] in the case of *Société du Figaro, SAS, et al. v. Apple Inc.*, Case No. 4:22-
cv-04437-YGR. I agree to comply with and to be bound by all the terms of this Stipulated Protective
Order and I understand and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any
information or item that is subject to this Stipulated Protective Order to any person or entity except in
strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern
District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even
if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full
address and telephone number] as my California agent for service of process in connection with this
action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____